IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ELVIA KANIUKA,	:	CIVIL ACTION
	:	
Plaintiff,	:	NO. 05-CV-02917
	:	
v.	:	
	:	
GOOD SHEPHERD HOME, et al.,	:	
	:	
Defendants.	:	

Stengel, J. **November 3, 2005**

MEMORANDUM AND ORDER

This employment discrimination action involves claims for the improper termination of a certified nurse's assistant. Plaintiff Elvia Kaniuka claims defendants Good Shepherd Home, Jayne Sigler, Courtney Sneath, and Larry Greene (collectively "Defendants") terminated her employment in violation of federal and state law. Defendants moved to dismiss Plaintiff's Amended Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Defendants must show that Plaintiff can prove no set of facts in support of her claims. They have not done so with regard to the first six claims in the Amended Complaint, and I deny the motion as to those claims. Defendants have shown that Plaintiff has failed to plead sufficient facts to support her claim for intentional infliction of emotional distress, and I grant Defendants' motion as to that claim.

I. BACKGROUND

Plaintiff alleges the following facts which the Court must accept as true while considering the Motion to Dismiss. Plaintiff worked as a certified nurse's assistant at defendant Good Shepherd Home in Allentown, Pennsylvania between October 30, 2000 and January 21, 2004. Good Shepherd employs at least 50 employees within a 75-mile radius of its Allentown facility. Plaintiff suffers from mental disabilities of anxiety and depression as well as from vertigo symptoms. Good Shepherd and its agents knew of Plaintiff's disabilities during her employment and had met with her to discuss her requests for workplace accommodations on several occasions.

On January 9 and 10, 2004, Plaintiff worked two consecutive shifts at Good Shepherd. At approximately 12:15 am on January 10, 2004, Plaintiff requested and received permission from her supervisor, defendant Sneath, to take a break from her employment responsibilities. During her break, Plaintiff drove her husband to their nearby home. While at home, Plaintiff took two tablets of what she believed to be meclizine, a medicine prescribed for her vertigo. Plaintiff now believes that she accidentally took Klonopin®, an anti-seizure medication prescribed to her husband. Plaintiff returned to work at approximately 12:45 am, and at some point took ibuprofen to treat a headache. Thereafter, Plaintiff lost consciousness and did not regain

consciousness until approximately 6:00 or 7:00 am when she awoke in a hospital, where she remained for six days. According to Plaintiff, two tablets of Klonopin® in any available dosage would have resulted in the symptoms that she displayed on January 10, 2005.

On January 15, 2004, Plaintiff's doctor informed Defendants that Plaintiff could return to work on January 26, 2004. On January 21, 2005, defendant Greene, a Human Resources Director at Good Shepherd, advised Plaintiff that her employment was being terminated. Greene stated that Plaintiff was being terminated (1) because defendant Sneath or Sigler claimed that Plaintiff had been sleeping on duty and had intentionally taken medication not prescribed to her, (2) for mental health reasons, and (3) for "being out on leave." Plaintiff believed that Greene's stated reasons for her termination were false, and that the real reason for her termination was her disabilities.

Plaintiff filed this lawsuit on June 20, 2005, alleging claims for (1) violation of the Americans with Disabilities Act of 1990 (the "ADA"), (2) retaliation under the ADA, (3) violation of the Pennsylvania Human Relations Act (the "PHRA"), (4) aiding and abetting in violation of the PHRA, (5) retaliation under the PHRA, (6) violation of the Family and Medical Leave Act of 1993 (the "FMLA"), and (7) intentional infliction of emotional distress ("IIED"). Plaintiff seeks injunctive and declaratory relief for Defendants' actions, as well as $100,000 in monetary damages.

On September 19, 2005, Defendants filed this Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Defendants argue that Plaintiff has failed to state a claim upon which relief can be granted as to Count II (retaliation under the ADA), Count IV (aiding and abetting in violation of the PHRA), Count V (retaliation under the PHRA), Count VI (violation of the FMLA), and Count VII (IIED). Defendants' motion does not challenge Count I (general violation of the ADA) or Count III (general violation of the PHRA).

II. Standard for a Motion to Dismiss

A motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted examines the legal sufficiency of the complaint. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). A federal court may grant a motion to dismiss only where "it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." Carino v. Stefan, 376 F.3d 156, 159 (3d Cir. 2004) (quoting Conley, 355 U.S. at 45-46). In determining whether to grant a motion to dismiss, a court must construe the complaint liberally, accept all factual allegations in the complaint as true, and draw all reasonable inferences in favor of the plaintiff. Carino, 376 F.3d at 159. See also D.P. Enters. v. Bucks County Cmty. Coll., 725 F.2d 943, 944 (3d Cir. 1984).

The Federal Rules of Civil Procedure do not require a plaintiff to plead in detail all of the facts upon which he bases his claim. Conley, 355 U.S. at 47. Rather, the Rules require a "short and plain statement" of the claim that will give the defendant fair notice of the plaintiff's claim and the grounds upon which it rests. Id. A plaintiff, however, must plead specific factual allegations. Neither "bald assertions" nor "vague and conclusory allegations" are accepted as true. See Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997); Sterling v. Southeastern Pa. Transp. Auth., 897 F. Supp. 893 (E.D. Pa. 1995).

In Swierkiewicz v. Sorema N.A., 534 U.S. 506, 510-12 (2002), the Supreme Court held that a plaintiff in an employment discrimination action is not required to plead every element of her prima facie case to survive a motion to dismiss. Rather, such a plaintiff need only allege material facts that, "in addition to inferences drawn from those [factual] allegations, provide a basis for recovery." Menkowitz v. Pottstown Mem'l Med. Ctr., 154 F.3d 113, 124 (3d Cir. 1998). Accordingly, "a court should not grant a motion to dismiss 'unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Conley, 355 U.S. at 45-46; Graves v. Lowery, 117 F.3d 723, 726 (3d Cir. 1997).

III. DISCUSSION

A. The ADA and PHRA Retaliation Claims

Defendants argue that Plaintiff has not alleged sufficient facts to maintain a retaliation claim under the ADA (Count II) or the PHRA (Count V). Specifically, Defendants maintain that Plaintiff has not alleged that she engaged in a "protected employee activity"—a required element in a prima facie case for retaliation under both the ADA and PHRA.

The Third Circuit has noted that "not everything that makes an employee unhappy qualifies as retaliation, for [o]therwise, minor and even trivial employment actions that an irritable, chip-on-the-shoulder employee did not like would form the basis of a discrimination suit." Robinson v. City of Pittsburgh, 120 F.3d 1286, 1300 (3d Cir. 1997) (citations omitted). The ADA's retaliation provision provides in pertinent part that: "[n]o person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter." 42 U.S.C. § 12203(a).[1] A prima facie case of retaliation under the ADA requires a plaintiff to show "(1) the employee engaged in a protected employee activity; (2) the employer took an adverse employment action after or

[1]Similarly, section 955(d) of the PHRA makes it unlawful "for any person, employer, employment agency or labor organization to discriminate in any manner against any individual because such individual has opposed any practice forbidden by this act, or because such individual has made a charge . . . under this act." 43 PA. CONS. STAT. § 955(d).

contemporaneous with the employee's protected activity; and (3) a causal link exists between the employee's protected activity and the employer's adverse action." Abramson v. William Paterson Coll. of N.J., 260 F.3d 265, 286 (3d Cir. 2001).[2]

The term "protected employee activity," as defined by the ADA, includes making ADA charges against an employer and participating in ADA proceedings. See 42 U.S.C. § 12203(a). Furthermore, the Eastern District of Pennsylvania has held that an employee's request for working conditions that accommodate a disability is a protected employee activity under the ADA. Merit v. Southeastern Pa. Transp. Auth., 315 F. Supp. 2d 689, 704-05 (E.D. Pa. 2004).

In this case, the Amended Complaint states that defendant Good Shepherd has "participated in discussions of Plaintiff's disabilit[ies] and *requests for an accommodation due to Plaintiff's disabilit[ies]*." Am. Compl. ¶ 17 (emphasis added). While the Amended Complaint does not explicitly state that Plaintiff made any accommodation requests to Good Shepherd, drawing all reasonable inferences in Plaintiff's favor connotes that at some point she made some type of request for workplace accommodations due to

[2]To establish a prima facie case of retaliation under the PHRA, a plaintiff must demonstrate elements similar to those required under the ADA. Specifically, a plaintiff must show that "(1) he engaged in a protected activity; (2) he was discharged subsequent to or contemporaneously with such activity; and (3) there is a causal link between the protected activity and the discharge." See Glanzman v. Metro. Mgmt. Corp., 391 F.3d 506, 509 (3d Cir. 2004) (applying these elements to claims under both Title VII of the Civil Rights Act of 1964 and the PHRA); Bailey v. Storlazzi, 729 A.2d 1206, 1214 n.9 (Pa. Super. Ct. 1999).

her disabilities.[3] Under Merit, this allegation is sufficient to plead a protected employee activity and meets the first requirement for a prima facie case of retaliation under the ADA.

The rest of the Amended Complaint, when viewed as a whole, alleges sufficient facts of an ADA and PHRA-prohibited retaliation to survive a motion to dismiss because Plaintiff alleges facts inferring that she was terminated by Good Shepherd after she made a request for workplace accommodations. The Amended Complaint satisfactorily alleges that Plaintiff made a request for workplace accommodations as described supra. Plaintiff also alleges that Greene informed her of her termination in the hospital and before Plaintiff returned to work. Am. Compl. ¶ 32. Termination of employment is clearly an "adverse employment action." Abramson, 260 F.3d at 288. As a result, the reasonable inference from Plaintiff's allegation is that she made her accommodations request before her termination, thus meeting the second element for a prima facie case of retaliation under the ADA. The Amended Complaint also alleges that Plaintiff did not believe the proffered reasons for her termination. Am. Compl. ¶ 33. The Court draws the reasonable inference from this allegation that there is some causal connection between Plaintiff's

[3]The Third Circuit has held that a charge of ADA violation need not be formal to qualify as a "protected employee activity." See Barber v. CSX Distrib. Servs., 68 F.3d 694, 701-02 (3d Cir. 1995). Following the logic in Barber, a request for workplace accommodation similarly need not be formal to constitute a protected activity, lending further support to Plaintiff's allegations.

protected employee activity and her termination. Accordingly, the Court denies Defendants' motion with regard to the ADA and PHRA retaliation claims under the liberal employment discrimination pleadings standard of Swierkiewicz and Menkowitz.

B. The PHRA Aiding and Abetting Claim

Defendants also argue that the Amended Complaint fails to aver sufficient facts to maintain an aiding and abetting action under section 955(e) of the PHRA (Count IV). Defendants argue that Plaintiff has failed to allege that the individual defendants named in the Amended Complaint (1) are supervisory employees and (2) were involved in the decision to terminate Plaintiff.

The PHRA generally does not apply to individuals, as its core provision applies only to "employers." See 43 PA. CONS. STAT. § 955(a); Dici v. Pennsylvania, 91 F.3d 542, 552 (3d Cir. 1996). Section 955(e), however, applies to individuals by forbidding "any *person*, employer, employment agency, labor organization or *employee*, to aid, abet, incite, compel, or coerce the doing of any act declared by this section to be an unlawful discriminatory practice." 43 PA. CONS. STAT. § 955(e) (emphasis added). Only supervisory employees may be held liable for aiding and abetting under section 955(e). Dici, 91 F.3d at 553 (stating that the PHRA provides individual liability for supervisory employees who aid or abet employer harassment by failing to end it); Davis v. Levy, Anstreich, Finney, Baldante, Rubenstein & Coren, P.C., 20 F. Supp. 2d 885, 887 (E.D. Pa. 1998).

In this case, the Amended Complaint alleges that defendant Sneath was Plaintiff's direct supervisor. Id. at ¶ 21. While the Amended Complaint does not specifically allege that defendants Sigler and Greene were Plaintiff's direct supervisors, the Court will infer from other allegations that these individual defendants had at least some supervisory authority over Plaintiff. See Am. Compl. ¶¶ 6-8 (Plaintiff alleges that each of the individual defendants in this action, Sigler, Sneath, and Greene, "acted[ed] in [their] supervisory and/or personal capacity"). After reading a number of the allegations of the Amended Complaint together the Court further infers that each individual defendant discriminated against Plaintiff due to her disabilities. See, e.g., Am. Compl. ¶ 21 ("Plaintiff requested and received permission from her supervisor, [d]efendant Sneath, to take her break"); ¶ 32 (defendant Greene advised Plaintiff that she was being terminated because defendants Sneath and Sigler claimed that Plaintiff had intentionally taken the prescription medication); ¶ 33 (Plaintiff believed that defendants Sneath and Sigler knew their allegation was false); ¶ 34 (Greene stated that Plaintiff was being terminated because of her mental health); ¶ 35 (Plaintiff believed the real reason for her termination was her disabilities).[4] Accordingly, the Court denies Defendants' motion with respect to the PHRA aiding and abetting claim.

[4]In addition, the Eastern District of Pennsylvania has denied a motion to dismiss under section 955(e) when the plaintiff's complaint included "at least one specific action taken by [a supervisory employee]: notifying Plaintiff of her termination." Atkinson v. Lafayette Coll., No. CIV. A. 01-CV-2141, 2002 WL 123449, at *4 (E.D. Pa. Jan. 29, 2002).

C. The FMLA Claim

Next, Defendants argue that Plaintiff has failed to allege sufficient facts to support her claim under the FMLA (Count VI). In order to state a claim under the FMLA, a complaint must at a minimum contain "allegations that, within the meaning of the FMLA, the defendant is an 'employer' and the plaintiff employee is an 'eligible employee.'" Reddinger v. Hosp. Centr. Servs., 4 F. Supp. 2d 405, 411 (E.D. Pa. 1998). An employee is deemed "eligible" under the FMLA when she has been employed (1) by the employer for at least 12 months, (2) for at least 1,250 hours of service during the 12-month period immediately preceding the leave, and (3) at a location where 50 or more employees are employed within 75 miles of that location. 29 U.S.C. § 2611(2); 29 C.F.R. § 825.110(a).

In this case, the Amended Complaint alleges that defendant Good Shepherd employed Plaintiff for more than three years. Am. Compl. ¶ 19. Plaintiff, therefore, meets the first requirement of being of an eligible employee under the FMLA. Additionally, the Court infers from the fact that Plaintiff was continuously employed for more than three years, as well as the fact that none of the parties have suggested any interruptions to Plaintiff's employment, that she meets the second requirement of being an eligible employee under the FMLA. See id. Finally, the Amended Complaint states that defendant Good Shepherd employs at least 50 employees within a 75-mile radius of its

work site, meeting the third requirement being of an eligible employee under the FMLA. Am. Compl. ¶ 15. Accordingly, the Amended Complaint has stated sufficient facts to qualify Plaintiff as an eligible employee under the FMLA.

The term "employer" is defined under the FMLA to mean "any person engaged in commerce or in any industry or activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year." 42 U.S.C. § 12111(5)(A). In this case, the Court will infer from the facts plead in the Amended Complaint that defendant Good Shepherd is an "employer" as defined by the FMLA. See Am. Compl. ¶ 12 (Good Shepherd is an employer as defined by the ADA); ¶¶ 15-16 (Good Shepherd does business in Allentown, Pennsylvania and has at least 50 employees within a 75-mile radius). Accordingly, the Amended Complaint sufficiently states a claim under the FMLA for purposes of Rule 12(b)(6), and the Court denies Defendants' motion with regard to this claim.

D. The IIED Claim

Finally, Defendants argue that Plaintiff's IIED claim (Count VII) must be dismissed because the Pennsylvania Workers' Compensation Act (the "PWCA") is the exclusive remedy for injuries sustained during the course of employment. The PWCA provides that "[t]he liability of an employer under this act shall be exclusive and in place of any and all other liability to such employee." 44 PA. STAT. CONS. § 481(a). However, a limited exception to the exclusivity provision exists for intentionally tortious conduct

committed by a third person and directed at an employee for personal reasons (the "third-party attack" exception). 44 PA. STAT. CONS. § 411(1).[5] In Fugarino v. Univ. Servs., 123 F. Supp. 2d 838, 844 (E.D. Pa. 2000), the Eastern District of Pennsylvania established that "the critical inquiry in determining the applicability of the third-party attack exception is whether the attack was motivated by personal reasons, as opposed to generalized contempt or hatred, and was sufficiently unrelated to the work situation so as not to arise out of the employment relationship."

In this case, Plaintiff has failed to allege facts sufficient to maintain a workplace IIED claim. The Amended Complaint does not state any facts indicating or inferring that the individual defendants' actions were motivated by personal reasons. Nor does the Amended Complaint even suggest that the individual defendants' actions were unrelated to their employment relationship with Plaintiff. Accordingly, the Court grants Defendants' motion with regard to the IIED claim.

IV. CONCLUSION

For the reasons described above, I deny Defendants' Motion to Dismiss with regard to Counts II, IV, V, and VI, and grant the motion with regard to Count VII. An appropriate order follows.

[5]Section 411(1) provides in pertinent part: "[t]he term 'injury arising in the course of his employment,' as used in this article, shall not include an injury caused by an act of a third person intended to injure the employee because of reasons personal to him." 77 PA. STAT. CONS. § 411(1).

ORDER

AND NOW, this day of November, 2005, upon consideration of Defendants' Motion to Dismiss (Doc. No. 5), and all responses thereto, it is hereby **ORDERED** that the motion is **DENIED** with regard to Counts II, IV, V, and VI, and **GRANTED** with regard to Count VII.

BY THE COURT:

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LAWRENCE F. STENGEL, J.